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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matters of	)	
	)	
Deployment of Wireline Services Offering	)	CC Docket No. 98-147
Advanced Telecommunications Capability	)	
	)	
Petition of Bell Atlantic Corporation	)	CC Docket No. 98-11
for Relief from Barriers to Deployment of	)	
Advanced Telecommunications Services	)	
	)	
Petition of U S WEST Communications, Inc.	)	CC Docket No. 98-26
for Relief from Barriers to Deployment of	)	
Advanced Telecommunications Services	)	
	)	
Petition of Ameritech Corporation to	)	CC Docket No. 98-32
Remove Barriers to Investment in	)	
Advanced Telecommunications Technology	)	
	)	
Petition of the Alliance for Public Technology	)	CCB/CPD No. 98-15
Requesting Issuance of Notice of Inquiry and	)	RM 9244
Notice of Proposed Rulemaking to Implement	)	
Section 706 of the 1996 Telecommunications	)	
Act	)	
	)	
Petition of the Association for Local	)	CC Docket No. 98-78
Telecommunications Services (ALTS) for a	)	
Declaratory Ruling Establishing Conditions	)	
Necessary to Promote Deployment of Advanced	)	
Telecommunications Capability Under Section	)	
706 of the Telecommunications Act of 1996	)	
	)	
Southwestern Bell Telephone Company, Pacific	)	CC Docket No. 98-91
Bell, and Nevada Bell Petition for Relief from	)	
Regulation Pursuant to Section 706 of the	)	
Telecommunications Act of 1996 and 47 U.S.C.	)	
§ 160 for ADSL Infrastructure and Service	)	

**COMMENTS OF BELL SOUTH CORPORATION ON  
PETITIONS FOR RECONSIDERATION OF BELL ATLANTIC  
AND SBC COMMUNICATIONS, INC., et al**

BellSouth Corporation, for itself and its affiliated companies ("BellSouth"), submits these comments in response to the Petition for Partial Reconsideration or, Alternatively, for Clarification filed by Bell Atlantic and the Petition for Reconsideration filed by SBC Communications, Inc., Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell (hereafter "SBC") of the Commission's *Memorandum Opinion and Order*, in the above captioned proceeding.<sup>1</sup>

In their Petitions, Bell Atlantic and SBC requested that the Commission reconsider that portion of the Order that requires "[t]o the extent technically feasible, incumbent LECs must 'take affirmative steps to condition existing loop facilities to enable requesting carriers to provide services not currently provided over such facilities.'"<sup>2</sup> The Order goes on to state that the LEC "may not deny [a competitor's request to condition a loop to be able to provide advanced service] on the ground that [the LEC] does not offer advance service over the loop, or that other advanced services that the [competitor] does not intend to offer could be provided over the loop." Bell Atlantic and SBC argue that requiring LECs to condition loops for competitors to

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<sup>1</sup> *Deployment of Wireline Services Offering Advanced Telecommunications Capability, Petition of Bell Atlantic Corporation for Relief from Barriers to Deployment of Advanced Telecommunications Services, Petition of U S WEST Communications, Inc. for Relief from Barriers to Deployment of Advanced Telecommunications Services, Petition of Ameritech Corporation to Remove Barriers to Investment in Advanced Telecommunications Technology, Petition of the Alliance for Public Technology Requesting Issuance of Notice of Inquiry and Notice of Proposed Rulemaking to Implement Section 706 of the 1996 Telecommunications Act, Petition of the Association for Local Telecommunications Services (ALTS) for a Declaratory Ruling Establishing Conditions Necessary to Promote Deployment of Advanced Telecommunications Capability Under Section 706 of the Telecommunications Act of 1996, Southwestern Bell Telephone Company, Pacific Bell, and Nevada Bell Petition for Relief from Regulation Pursuant to Section 706 of the Telecommunications Act of 1996 and 47 U.S.C. § 160 for ADSL Infrastructure and Service*, CC Docket Nos. 98-147, 98-11, 98-26, 98-32, 98-78, 98-91 and CCB/CPD No. 98-15 RM 9244. *Memorandum Opinion and Order*, and Notice of Proposed Rulemaking, FCC 98-188 (rel. Aug. 7, 1998) ("*Memorandum Opinion and Order*").

<sup>2</sup> *Memorandum Opinion and Order* ¶ 53. The order indicated that "conditioning" should include requiring local exchange carriers ("LEC") to remove loading coils, bridge taps and other electronic impediments, if technically feasible to provide advanced services.

provide advanced services even if the LEC does not offer such services over the loop is tantamount to requiring the LEC to provide “superior access” for the LEC’s competitors.

Pursuant to Section 251(c)(3) of the Telecommunications Act of 1996 (“1996 Act”) the Commission may prescribe rules to ensure that LECs provide nondiscriminatory access to network elements on an unbundled basis.<sup>3</sup> This Section, however, does not provide the Commission unlimited jurisdiction over the type of access that it may require the LECs to provide to its competitors.<sup>4</sup> Both Bell Atlantic and SBC correctly demonstrate that the Commission may not prescribe rules that require the LECs to establish a higher quality access than the LECs have established for themselves.<sup>5</sup> Indeed, the Commission’s jurisdiction is limited to establishing “a floor below which the quality of [access] may not go.”<sup>6</sup>

The section in the Order that Bell Atlantic and SBC petitioned is hardly a model of clarity. As Bell Atlantic stated “the order . . . could be interpreted to require carriers to provide such loop conditioning<sup>7</sup> even where they do not perform such work for themselves. If this is the case, the local exchange carriers would be required to provide competitors with superior access to what they provide themselves.”<sup>8</sup> As demonstrated above, and in both parties’ Petitions for Reconsideration, such an interpretation clearly exceeds the Commission’s jurisdiction over the prescription of rules regarding access. These jurisdictional boundaries have been firmly

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<sup>3</sup> 47 U.S.C. § 251(c)(3).

<sup>4</sup> *Iowa Utilities Bd. v FCC*, 120 F.3d, 753, 812-813 (8th Cir. 1997), *cert. granted*, 118 S.Ct. (1998).

<sup>5</sup> See Bell Atlantic Petition for Reconsideration at 3-5; SBC Petition for Reconsideration at 2-5.

<sup>6</sup> *Iowa Utilities* 120 F.3d at 812.

<sup>7</sup> See *supra* note 2 for a description of the type of “conditioning” referred to in this sentence.

<sup>8</sup> Bell Atlantic Petition for Reconsideration at 3.

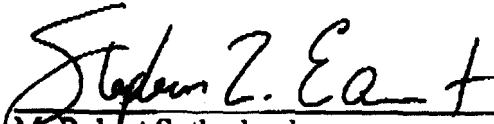
established and cannot be arbitrarily changed by the Commission.<sup>9</sup> Accordingly, the Commission must modify the Order to clarify that ILECs are not required to provide competitors with unbundled loops that are superior in quality to the facilities that ILECs provide for themselves or their affiliates.

### **Conclusion**

Pursuant to the preceding discussion, BellSouth supports the Petitioners' request that the Commission clarify the Order to conform to the requirements of the 1996 Act.

Respectfully submitted,

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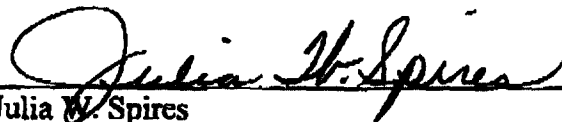
Date: October 5, 1998

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<sup>9</sup> See *Iowa Utilities* 120 F.3d at 812-813.

## CERTIFICATE OF SERVICE

I hereby certify that I have this 5th day of October 1998, serviced all parties to this action with the foregoing **BELLSOUTH COMMENTS**, reference CC Docket 98-147, by hand service or by placing a true and correct copy of the same in the United States Mail, postage prepaid, addressed to the parties as set forth on the attached service list.

  
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